

March 3, 2004

The Honorable Carl R. Johnson, Chair
Environment Committee
Room 104, Legislative Office Building
Concord, NH 03301

Re: House Bill 503, relative to septic system construction permits

Dear Chairman Johnson:

Thank you for the opportunity to testify on HB 503, which seeks to clarify the language of RSA 485-A:5-b, Municipal Responsibility. RSA 485-A:5-b currently requires that “*Each municipality shall either provide, or assure access to, a department of environmental services approved septage facility for its residents for a minimum of a 5 year period.*” HB 503 clarifies the criteria by which municipalities must demonstrate that access to an approved septage facility has been provided. It also imposes a deadline of July 1, 2010 after which the Department of Environmental Services (DES) will be prohibited from issuing new septic system permits for systems in municipalities that have not complied with RSA 485-A:5-b. We agree with the need to clarify this language and support this bill as amended by the House. The amendment provides more time for compliance based on DES’s experience with other effective programs.

DES has worked cooperatively for several years with municipalities and septage haulers to implement a course of action to ensure adequate, sustainable septage disposal capacity and attain municipal compliance with RSA 485-A:5-b. In April 1999, DES established a Septage Task Force (STF) in conjunction with New Hampshire’s septage industry leaders and other interested parties. The STF consists of municipal, industry, legislative, and environmental group representatives brought together to plan for New Hampshire’s septage disposal needs. In the *Findings and Recommendations/Final Report* dated June 23, 2000, the STF noted that proper septage disposal is a growing problem in New Hampshire. Septage disposal capacity at New Hampshire wastewater treatment facilities and other sites is inadequate to treat the $90 \pm$ million gallons generated annually. Over 24% is disposed out of state. The burden to find a state-approved disposal site is too often a septage hauler problem because towns have failed to provide an adequate solution for septage disposal for their residents as required by RSA 485-A:5-b.

Progress has been made to address both the capacity and municipal compliance issues through the work of the STF and DES. The DES Septage Coordinator, Ms. Patricia Hannon, was hired in July 2002 and has been fully engaged in these issues. Incentives for municipal wastewater

treatment plants to develop new or increased septage disposal capacity were provided with the passage of HB 207 in 2002. Effective July 1, 2003, state-aid grants are now available, on a sliding scale based on the number of municipalities served with agreements under RSA 485-A:5-b, up to 50% of the capital costs of new construction or upgrades for septage disposal facilities. These program improvements represent a proactive approach in cooperation with the regulated community. This is far preferable to aggressive enforcement but will take time to be effective.

HB 503 seeks to clarify the language of RSA 485-A:5-b to more clearly define what is meant by the phrase “shall provide, or assure access to” a DES-approved facility by specifying that towns must have a written agreement with a recipient facility or alternative option to accept septage generated from that municipality. The amended bill provides a formula to calculate how a town’s septage needs may be determined, based on the number of households with septic tanks. While there is no mandatory reserve capacity aspect, these changes encourage towns to develop solutions that provide long-term septage disposal for their residents. DES agrees with these proposed changes.

Section III of the bill proposes a prohibition on the issuance of new septic system construction permits on July 1, 2010 for any municipality that is not in compliance with the municipal responsibility provisions cited above. This section seeks to directly link approvals for new septic systems, which generate septage, with the availability of adequate treatment and disposal capacity for septage. Providing a deadline imposed by the legislature with clear impacts would provide greater incentive for municipal compliance. Long-term deadlines established by statute or rule have worked well in a few other DES programs; specifically, the campground compliance program (which required, by state rule, upgraded wastewater disposal and water supply facilities) and the underground storage tank program (which required, by federal statute, the replacement of substandard facilities). In both cases, the deadline was 10 years from the effective date of the rule or law. In each case, DES provided education, outreach and compliance assistance targeted at the regulated sector during the ten-year compliance period. This provided adequate time for these efforts to work and the vast majority of facilities were in compliance by the deadline, leaving only a few that required formal enforcement action. While the amended bill grants only a six-year compliance period instead of a ten-year period, DES believes that sufficient progress will be made toward compliance, especially with the dual provision of a Septage Coordinator working with towns and the availability of assistance grants. Existing law (RSA 485-A:22) provides the means for DES to mandate municipal compliance. However, the current bill provides a more proactive approach to compliance by providing sufficient time for a municipality to seek a solution. This also affords time for DES, municipalities and septage haulers to develop additional capacity to solve this problem for the long term. Regular annual reports documenting compliance will be provided to the legislature as required by the bill.

In summary, DES supports this amended bill to clarify municipal responsibility for septage while providing a reasonable period for compliance and an opportunity for the legislature to discuss progress with DES.

Chairman Johnson
March 3, 2004
Page 2

HB 503

Thank you for your consideration and if you have any questions, please contact me at 271-3503 or Richard Flanders at 271-3571.

Sincerely,

Michael P Nolin
Commissioner

cc: Representative Don Philbrick
Representative Betsey Patten